

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRIAN DEWARD,
(TDCJ-CID #1426930),
Plaintiff,

vs.

CHRIS KIRK,

Defendant.

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CIVIL ACTION H-09-3669

MEMORANDUM AND OPINION

Brian Deward, a state inmate, has failed to submit a completed and signed application to proceed *in forma pauperis* or pay the filing fee, as required by notice from the Clerk dated December 14, 2009. (Docket Entry No. 4). The Clerk's notice specifically provided that failure to comply as directed may result in the dismissal of this action. The court has not received any correspondence or pleadings from the plaintiff since he filed this lawsuit on October 13, 2009. The plaintiff's failure to pursue this action forces this court to conclude that he lacks due diligence.

Under the inherent powers necessarily vested in a court to manage its own affairs, this court determines that dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Clofer v. Perego*, 106 F.3d 678 (5th Cir. 1997); 8 J. Moore, *Federal Practice* § 41.51(3)(b) & (e) (3d ed. 2002). Upon a proper showing, relief from this order may be granted in accordance with FED. R. CIV. P. 60(b). *See Link*, 370 U.S. at 635.

This action is dismissed without prejudice for want of prosecution. The plaintiff's motion to proceed *in forma pauperis*, (Docket Entry No. 2), is denied as moot.

SIGNED on January 22, 2010, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
United States District Judge